

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

ACUE WICKS, JR.,

Plaintiff,

VS.

BBX, INC., and GERALD MILLER

Defendants.

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CIVIL ACTION

Docket no.: 6:10-CV-1357

**U.S. DISTRICT COURT  
ND OF N.Y.  
FILED**

FEB 13 2012

**LAWRENCE K. BAERMAN, Clerk  
UTICA**

**Stipulation of Dismissal Without Prejudice**

This is a trucking case. Defendant recently requested to sue the driver of the rig occupied by Wicks and the driver's employer. At least one of them is a citizen of Tennessee, which is Wicks' domicile. As a result, Plaintiff would also want to add the new parties but he cannot do so because there is no diversity of citizenship. If Defendant filed a third party claim against the new parties pursuant to Fed. R. Civ. P. 14(a)(1), Plaintiff would still be unable to sue the new parties, even though they were made a party to this suit, because 28 U.S.C. 1367(b) requires that there be diversity of citizenship.

Because of these jurisdictional problems and the fact that we cannot join all potentially-relevant parties, the parties have agreed that the Court should dismiss Plaintiff's claims without prejudice, with costs being borne by the party incurring same, pursuant to Fed. R. Civ. P. 41.

Respectfully submitted,

GORDON, ELIAS & SEELY, L.L.P.

/s/ Jeff Seely

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BBX, INC. and GERALD MILLER**

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**CIVIL ACTION**

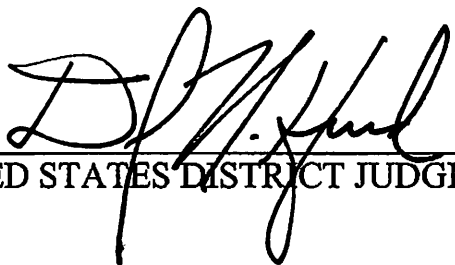
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**ORDER**

After considering the Parties' Stipulation of Dismissal Without Prejudice, the Court GRANTS the motion. This case is dismissed without prejudice. Costs will be borne by the party incurring same.

Signed this 13<sup>th</sup> day of February, 2012.

*Utica, N.Y.*

  
UNITED STATES DISTRICT JUDGE